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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,411	12/05/2006	Bernard Dupont	403661/WEINSTEIN	2957
23548 7590 05/12/2010 LEYDIG VOIT & MAYER, LTD 700 THIRTEENTH ST. NW SUITE 300 WASHINGTON, DC 20005-3960				
EXAMINER				
SMITH, JASON C				
ART UNIT		PAPER NUMBER		
3617				
NOTIFICATION DATE		DELIVERY MODE		
05/12/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCpatent@leydig.com  
Chgpatent@leydig.com

### Office Action Summary

**Application No.**

10/573,411

**Applicant(s)**

DUPONT ET AL.

**Examiner**

Jason C. Smith

**Art Unit**

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 03/27/2006 is being considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-12 and 15-27 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has changed "pin point contact" to "one point at a time". It is still unclear what applicant means by one point at a time. The drawings appear to show a significant percent of contact (see figure 2). The term "point" can be interpreted many different ways--it could mean a "large point" or a "small point", both terms are relative to the person using the term.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3. Claims 1-3, 5, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andre et al. (US 7228803) in view of Jensen (6,523,480).** Andre discloses a system for guiding a vehicle along a guiding rail, having a rolling surface and at least one side surface that constitutes a guiding surface, the system comprising: a guiding roller device cooperating with the rolling surface and the side surface and including a rolling part for rolling contact at a peripheral surface with the rolling surface of the rail (see Fig. 2), and at least one side part coming into contact with the side surface of the rail facing the at least one side part (see Figures), wherein the rolling part and the side part are rotationally connected and the side part is in point contact with the rail and has, at a point of contact with the rail, the same speed as the rolling part on the rolling surface on rail (the speed of the vehicle is also reflected in the speed of the wheel 14 and the speed of the wheel 13 a, b, and their points of contact with the rail of Jensen). Also, for purposes of applying art the examiner will interpret "point" to mean some amount of surface contact less than significantly complete contact between the wheel surface and rail (see rejections under 35 USC 112 above). Andre discloses the guide set forth above, but does not disclose the roller and rolling surface for moving the vehicle. However, Jensen does disclose a roller (14) and surface (15). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to provide a roller and surface disclosed in Andre in view of the teaching of Jensen. The motivation for doing so would have been to provide a means for the vehicle to move; **[claim 2]** wherein the side part of the roller device (Fig. 2) includes at least one rolling support roller and at least one side roller and the side part has a diameter and shape for

contacting the rail so that the side roller, at the point of contacting the side surface of the rail, has the same speed as the rolling part contacting the rolling surface of the rail (see Fig. 2); **[claim 3]** for guiding by two parallel guiding rails having exterior side surfaces as guiding surfaces, the guiding system comprising a support roller and a side roller for each guiding rail (See Figs. 1-3 of Jensen); **[claims 5, 26, 27]** wherein areas of contact of the side roller have, in radial section, a convex profile, and contact surfaces of the rail are essentially planar (See Fig. 2 of Andre et al.).

#### ***Allowable Subject Matter***

4. Claims 4 and 6-12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
5. Claims 15-25 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

#### ***Response to Arguments***

3. Applicant's arguments filed 01/28/2010 have been fully considered but they are not persuasive. It appears that the applicant's arguments are more limiting than that of the claims. Specifically, the applicant states that the art of record fails to show contact not at a "point contact". Applicant is reminded that there are many different sizes of "points". Applicant's disclosure does not specify what dimensions he/she means by "point". "Point" could mean anything from a belaying pin (several square inches of

contact) to a sewing pin (fractions of square millimeters of contact). In fact there appears to be a conflict in applicant's disclosure and figures in that while applicant's specification and claims call for this "point" contact, the drawings appear to show a significant percent of contact (see figure 2). There is no definition or percentage of contact that defines what applicant intends as "point" contact. Consequently, a potential infringer would not know how much contact they could avoid and still not be "point" contact. One reading the claims in light of the specification and disclosure would be left to guess at what cut-off point does the contact go from 'point' to 'not point'? Also, applicant argues that no annular convex projections are found on the guiding wheels, however, figure 2 of Andre et al. does show this profile.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason C. Smith whose telephone number is (571) 270-5225. The examiner can normally be reached on M- F, 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. Joseph Morano/  
Supervisory Patent Examiner, Art Unit 3617

/Jason C Smith/  
Examiner, Art Unit 3617

